UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA (Alexandria Division)

DAVID P. DONOVAN,	
Plaintiff,	
v.	Civil Action No. 1:20-cv-1344
BETH A. WILKINSON,	
Defendant.	

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff David P. Donovan ("Plaintiff" or "Donovan"), pursuant to Local Rule 7(F)(1), hereby replies to Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction ("Opposition"). Plaintiff commenced this action to enjoin Defendant Beth A. Wilkinson ("Defendant" or "Wilkinson") from disseminating confidential information she acquired that is the subject of

New information contained in the Opposition, and its declarations, confirm beyond question that attorney Beth Wilkinson acquired confidential information based upon a knowingly false representation she made that Pro-Football, Inc. ("PFI") had authorized her to represent that PFI had waived their confidentiality rights . Wilkinson's Opposition not only establishes that her actions were tortious, but that she immediately disseminated the tortiously obtained information to , in further violation of , to say nothing of her ethical obligations to her client.

Notwithstanding that Plaintiff is unable to provide material information known to him concerning this matter due to Defendant's failure to seek and obtain

Defendant's Opposition makes clear that it is her intent to criticize Plaintiff's investigation

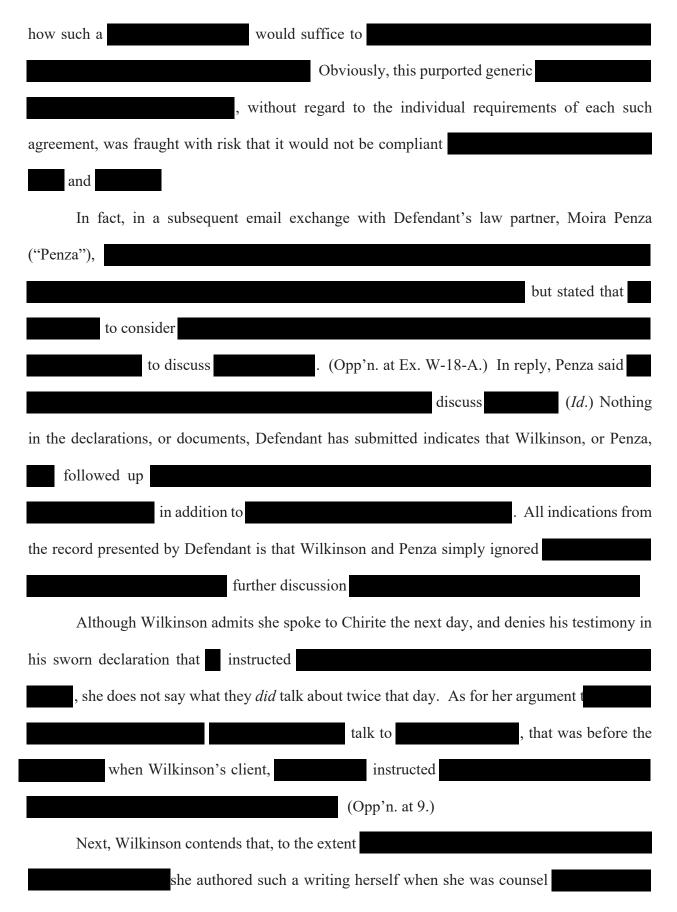
In light, however, of the uncontested facts Defendant has presented about the extent to which the information she improperly obtained has already been disseminated

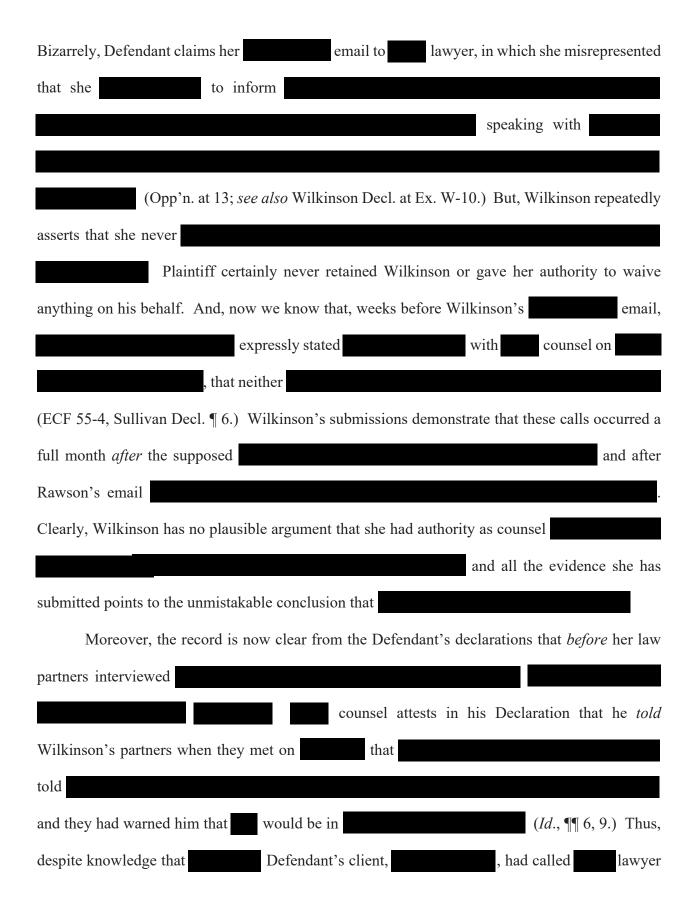
Plaintiff has reluctantly concluded that the injunctive relief he sought is no longer of practical value. Although he sets forth herein his response to Defendant's principal arguments in her Opposition so that the record can be clear, Plaintiff is filing herewith, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), a Notice of Voluntary Dismissal of this action, without prejudice to the filing of a future action, if appropriate, for money damages.

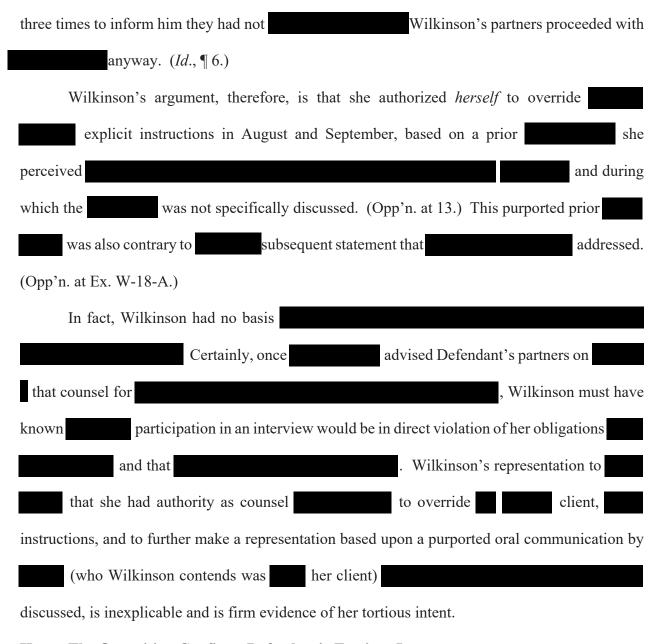
I. Defendant's Contention That She Authored A Valid Is Baseless.

Wilkinson's contention that she, or her law partners, could be the authors of an effective is baseless. (Opp'n. at 13.) Defendant asserts that one of her first tasks was to "confirm with [PFI] that [her] firm had authority to tell former employees that the Team was releasing them from their confidentiality obligations for purposes of talking to [her] firm." (Opp'n. at 8.) Conveniently, rather than obtaining any written memorialization of that authority, Wilkinson claims that she had a conversation

| Would generically waive | (Id.) Wilkinson claims | (Id.) It is highly implausible | such a representation because | instruction | . In fact, there is no indication that Wilkinson indicate she had any discussion with







II. The Opposition Confirms Defendant's Tortious Intent.

The reasonableness of the reliance by and her counsel on Wilkinson's representations is not an issue for this litigation. Nor is Wilkinson's claim that the relief Plaintiff has requested would disrupt her client relationship with a hardship that should sway the Court. (Opp'n. at 26.) The disruption of Wilkinson's client relationship, if any, stems from her choice, that she tortiously secured, and which resulted in client,

new client, Proving why Wilkinson misrepresented counsel
is not Plaintiff's burden, only that she, in fact, did so in violation of the rights of
Nevertheless, Defendant argues Plaintiff has failed to present a motive for her tortious
conduct. (Opp'n. at 19.) That would be a topic for discovery in a deposition. Perhaps Wilkinson
acted precipitously because
counsel for conflict between the position she was taking
her client
, according to , to conduct an investigation
Perhaps Wilkinson feared that if she
, she would $-$ as she
has asserted repeatedly throughout this matter so far -
Perhaps Wilkinson
was so desirous of this high-profile engagement that she was prepared to ignore the
facts, in order to be able to complete her report
without any further delay.
Whatever Wilkinson's motivations, however, these facts plainly raise substantial questions
about the objectivity, thoroughness, fairness, and even competence
Wilkinson went to great lengths to secure an interview with in order to unearth
of which
Wilkinson immediately shared with the League. And, she did so knowing that Donovan remains
subject to binding confidentiality obligations owed to

III.	The Opposition Confirms Defendant Intends To Disparage Plaintiff's Investigation Because He Would Not Submit to Her Demands For An Interview.
	Defendant's accusation that Plaintiff is refusing to defend
	. (Opp'n. at Ex. W14.) Wilkinson has expressly threatened
to rep	ort to that Plaintiff is interfering with her investigation by not submitting to an
interv	iew. (Id.) Yet, she also has filed multiple letters from Plaintiff's counsel asserting that
Dollo	van would cooperate if
	At the same time, Wilkinson admits that
she ha	release that would
	these matters. counsel's
	, which is all but an open threat that
any in	formation
	(Sullivan Decl. ¶ 14.)
	Thus, while Wilkinson went so far as to misrepresent her authority to release
	to secure , she appears to have done literally
nothir	ng to secure
11011111	
	to secure
	duties he owes
	, despite Donovan repeatedly proposing . (Opp'n.

at Ex. W-13, W-15.) It would be patently untrue to cast Donovan as uncooperative in an impending report ______, or to otherwise disparage his investigation,

IV. Defendant's Dissemination Of The Confidential Information Appears Already To Have Occurred.

As shown, the evidence revealed by the Opposition substantially strengthens Plaintiff's likelihood of success on the merits of his tortious interference claim. Unfortunately, however, other facts revealed to Plaintiff for the first time by the Opposition show that disclosure of the tortiously acquired information — which was the principal relief he was seeking by the requested injunction — has already occurred. Thus, even an injunction prohibiting further disclosures or discussion about the matter in Wilkinson's report, if any, would likely be pointless, for the facts and information now known — and what it does with that information, is already out of Defendant's hands.

As a consequence, and notwithstanding the new evidence Plaintiff believes conclusively establishes that Defendant tortiously interfered with the parties' rights and obligations, Plaintiff no longer believes burdening the Court with consideration of a request for injunctive relief is a wise use of judicial resources, given that the cat is already out of the proverbial bag, and there is little more this Court can do to unring that bell under the facts now before it. Absent a present need for injunctive relief, Plaintiff also believes that pursuing a claim for money damages would be more appropriate after Defendant determines whether she will author a written report that disparages Plaintiff, and until makes a determination about further dissemination of this information and the report, if any, it receives from Defendant. Therefore, Plaintiff is simultaneously filing herewith a voluntary dismissal of this action, without prejudice

under Fed. R. Civ. P. 41(a)(1)(A)(i). Nevertheless, Plaintiff res	serves his rights to refile an action	
seeking damages for reputational harm against Defendant and any other person or entity that		
, tortiously interfered	false and defamatory statements	
about Plaintiff's conduct of the investigation		

Respectfully submitted, this the 23rd day of November, 2020,

/s/ Cathy A. Hinger

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Counsel for Plaintiff

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Notwithstanding the foregoing, Plaintiff repeats what his counsel advised Defendant multiple times: If counsel for obtains, and provides, satisfactory regarding attorney-client privilege and , he remains willing to be interviewed with respect to any matter under review.

CERTIFICATE OF SERVICE

I hereby certify this 23rd day of November, 2020, that I caused a true copy of the foregoing to be filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record, and that I provided email copies of the foregoing to all counsel of record.

<u>/s/ Cathy A. Hinger</u>
Cathy A. Hinger, Esq.